

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

RSC Equipment Rental, Inc., an Arizona)
Corporation)
Plaintiff,) No. C09 02784 CRB
vs.) ORDER Re:
Richard Darell, an individual; David Williams,) STIPULATED PRELIMINARY
an individual; Paul Connes, an individual, and) INJUNCTION AS TO
Justin Marshall, an individual) DEFENDANT PAUL CONNES
Defendants.)

This matter has come before the Court on Plaintiff RSC Equipment Rental, Inc.'s Ex Parte Application for Temporary Restraining Order and Application for Order to Show Cause re: Preliminary Injunction ("Application"), and the Court has considered the Application, and all supporting declarations, and the stipulation of Plaintiff and Defendant Paul Connes, and it appearing,

That RSC is likely to succeed on the merits of its claims that Defendants have engaged in trademark cybersquatting and unfair competition by acting in concert to perpetrate a scheme under which they have registered domain names containing and/or confusingly similar to RSC's

1 trademarks, used the domain names to send e-mails falsely claiming to be RSC employees for
2 the purpose of obtaining goods from third party computer electronics vendors through fraudulent
3 pretenses and receiving those fraudulently obtained goods via FedEx and/or UPS delivery;

4 That Defendant Connes has admitted to receiving goods at his home address of 365
5 Chateau La Salle Drive, San Jose, CA 95111, for which Plaintiff RSC Equipment Rental, Inc.
6 was the named addressee, and that upon receipt, Defendant Connes reshipped the goods to third
7 parties located outside of the United States;

8 That Defendant Connes was acting at the direction of and in concert with Defendant
9 Justin Marshall;

10 That RSC has suffered irreparable harm from Defendants' violation of its trademarks and
11 that there is a serious threat of further fraudulent activity and continuing irreparable harm to RSC
12 and the general public if an injunction is not entered against Defendants;

13 That there is a threat that Defendants will take steps to destroy, alter or hide the evidence
14 of their fraudulent conduct, including but not limited to the electronic media containing that
15 evidence, or otherwise prevent discovery of actions they have taken with respect to their
16 activities;

17 That if Defendants were to destroy, alter or hide the evidence of their actions, or
18 otherwise prevent discovery of their actions taken with respect to RSC's trademarks, RSC would
19 suffer further immediate and irreparable injury, loss, and damage;

20 That RSC's need to protect its trademark rights, and the frustration of the purpose of this
21 suit if RSC is not protected, outweighs any burden on Defendants, such that the balance of
22 hardships tips sharply in RSC's favor; and

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1 That this order is intended to prevent further misuse of RSC's trademarks by Defendants
2 and to preserve evidence relevant to RSC's claims;

3 **IT IS HEREBY ORDERED** that Defendant Paul Connes, his servants, agents,
4 employees and attorneys, and any and all persons in active concert or participation him are
5 hereby temporarily restrained and enjoined from:

- 6 A. Registering, attempting to register, maintaining, transferring and/or using any
7 domain names containing the trademarks RSC, RSC EQUIPMENT RENTAL,
8 RSC Rental Service Corporation, RSC ONLINE (the "RSC Marks"), or any
9 colorable imitations thereof, including without limitation <rsc-rental.com>, <rsc-
10 rentals.com> and <rscrentalinc.com>;
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12 B. Representing or otherwise holding themselves out to others as employees,
13 contractors, representatives, or agents of RSC, or as being authorized to act on
14 behalf of RSC, for any purpose;
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16 C. Sending e-mail messages using any e-mail account names, or incorporating any
17 content or attachments, that contain any RSC Marks, or colorable imitations
18 thereof, for the purpose of soliciting any goods or services;
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20 D. Receiving, signing for, forwarding or otherwise re-distributing packages or
21 shipments for which RSC is identified on the package, packaging label, packing
22 slip or shipping manifest as an intended recipient of the package or shipment;
23
24 E. Secreting, removing, destroying or altering in any fashion any records, documents
25 or things relevant to this lawsuit;
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27 F. Secreting, removing, destroying, encrypting, erasing, deleting, overwriting or
28 otherwise altering in any fashion electronically stored information in their

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1 possession, custody or control, stored in magnetic or other media, that is relevant
2 to the claims in this lawsuit. Electronic stored information includes, but is not
3 limited to: originals and all copies of electronic mail ("e-mail"); activity listings
4 of electronic mail receipts and/or transmittals; voicemail; audio or video
5 recordings of any kind; computer programs (whether private, commercial or a
6 work-in-progress); programming notes or instructions; output resulting from the
7 use of any software program, including word processing documents, spreadsheets,
8 database files, charts, graphs, and outlines; operating systems; source code of all
9 types; JPEG files; GIF files; PIF files; batch files; ASCII files; log files of any
10 kind; temporary (TMP) files and all miscellaneous electronic files and/or file
11 fragments, regardless of the media on which they are stored and regardless of
12 whether the data resides in an active file, deleted file, or file fragment. Electronic
13 stored information also includes any and all information stored in hard disks,
14 floppy disks, CD-ROM or DVD disks, removable media, storage area networks
15 (SAN) and their equivalents, magnetic tapes, and computer chips (including but
16 not limited to EPROM, PROM, RAM and ROM). Electronic data also includes
17 the file, folder tabs, containers or labels appended to any storage device
18 containing electronic data;

21 G. Initiating any procedure that would alter any active, deleted or fragmented
22 electronic stored information. Such procedures may include, but are not
23 necessarily limited to, deleting or attempting to delete or overwriting or
24 attempting to overwrite any electronic information, saving newly-created files to
25 disks that already contain information, loading new software on such disks,

wiping such disks, reformatting such disks, re-installing the operating system, or running data compression or defragmentation (optimization) routines on them;

H. Rotating, altering, encrypting or destroying any media that stores electronic data where such activity could result in the alteration or loss of any electronic data; or

I. Disposing of any media that contains electronically stored information.

IT IS FURTHER ORDERED that Defendant Paul Connes has acknowledged that RSC's duly authorized representatives, accompanied by the United States Marshal Service, entered his residence at 365 Chateau La Salle Drive, San Jose, CA 95111, on the 3rd day of September, 2009, and that he produced the items identified on Exhibit A attached hereto.

IT IS FURTHER ORDERED that Defendant Connes released into the custody of RSC's computer forensic expert, LECG, the items listed on Exhibit A to be imaged and returned to Defendant Connes as provided in this Order.

IT IS FURTHER ORDERED that Defendant Connes shall continue to assist plaintiff's representatives in identifying relevant data and devices and shall provide any and all passwords/access codes necessary to access each device, application, encrypted file, and password protected file located on the devices to be imaged.

IT IS FURTHER ORDERED that Defendant Connes, to the extent he has not already done so, shall also identify and immediately produce to RSC and its representatives for inspection and copying the following information and documents in his possession, custody or control:

(a) All records, electronic and hard copy, concerning their registration and use of the domain names <rsc-rental.com>, <rsc-rentals.com>, <rscrentalinc.com> and any

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1 other domain name incorporating "RSC" or any colorable imitation of the RSC
2 Marks;

- 3 (b) All records, electronic and hard copy, concerning his receipt of goods or packages
4 addressed to RSC Equipment Rental and the actions taken with respect to such
5 goods and packages after receiving them; and
6 (c) All correspondence, including but not limited to emails with David Williams,
7 Justin Marshall and/or Richard Darell.

9 **IT IS FURTHER ORDERED THAT:**

10 1. To protect the integrity of the evidence and the confidentiality of Defendant
11 Connes' data on the devices produced for imaging, the electronic data shall be mirror imaged
12 according to the following protocol:

- 13 (a) A verified bitstream image or "forensic mirror image" of each device, hard drive
14 or other storage media will be created. No data will be changed or modified and
15 no programs will be installed onto any devices;
16 (b) All media that can be write protected will be write protected immediately and any
17 use of the images will be write blocked so that they cannot be modified;
18 (c) Each person involved in the imaging process, including RSC's attorneys and
19 computer experts, will sign and be bound by the Confidentiality Order entered on
20 this same date;
21 (d) Within five (5) days after the completion of the imaging process, Defendant
22 Connes (or his attorney(s)) will be given one complete copy of the image(s)
23 produced from the devices found at his residence;
24 (e) RSC's forensic consultants will search the image(s) in accordance with the search

1 protocol attached as Exhibit B hereto and, upon completion, will provide each
2 party with a list of files returned by the searches conducted. They will also
3 provide Defendant Connes and/or his attorney(s), on DVD or other appropriate
4 storage media, with one copy of the listed files retrieved from the search of their
5 respective devices. Defendant Connes and/or his attorney(s) will be allowed to
6 review the files for privilege before RSC or its counsel is provided with a copy of
7 the files;

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- 9 (f) Defendant Connes and/or his attorney(s) shall have ten (10) days from receipt of
10 the listed file(s) to identify any data files that are subject to a claim of privilege
11 and to serve upon RSC's attorneys a privilege log identifying such data files along
12 with information sufficient to establish the claimed privilege;
- 13 (g) Upon the expiration of the ten day period set forth in subparagraph (f) above,
14 RSC's attorneys shall be provided with a copy of all files from the search list for
15 which there has been no timely claim of privilege by Defendant Connes;
- 16 (h) If RSC wishes to challenge a privilege claim made by Defendant Connes as to a
17 particular file, RSC shall first meet and confer with Defendant Connes and
18 attempt to resolve the dispute without court intervention;
- 19 (i) All files provided to the parties are to be governed by and treated as Confidential
20 under the Confidentiality Order;
- 21 (j) RSC's computer forensic consultants will retain in escrow during the pendency of
22 this suit the verified bitstream image or "forensic mirror image" of each device,
23 hard drive and other storage media that has been imaged or may yet be imaged in
24 connection with this lawsuit;
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(k) RSC's computer forensic consultants will promptly return to Defendant Connes all storage devices belonging to them that are found to contain no files responsive to their search. For any other device that is found to store files containing any RSC Marks, or confusingly similar designations, such files shall be permanently deleted from the original device before it is returned; however, the complete image of the device containing all files shall be maintained by RSC's computer forensic consultants as provided in this Order; and

(l) On or before 30 days after either a judgment becomes final and non-appealable or all parties have executed a settlement agreement, the images and all copies shall be destroyed.

2. RSC's computer forensic consultants will act as substitute custodian of any and all data imaged pursuant to this order and shall hold harmless the United States Marshal Service and its employees for any claims asserted that are based upon the conduct of RSC's computer forensic consultants, while acting as custodian of the items seized for imaging.

3. The security in the amount of \$1,000.00 posted by Plaintiff RSC Equipment Rental, Inc. on August 21, 2009, which the Court acknowledges it has received, is hereby released, and the parties agree that no security shall be required to secure this stipulated protective order.

4. Defendant Connes shall not, directly or indirectly, alert or communicate anything about this case to any of the other Defendants, or to any other persons involved in the scheme to

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1 solicit, procure, receive, sell, and distribute goods using the RSC Marks and colorable imitations
2 thereof, until they have been served with a copy of the Summons and Complaint.

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Signed this 10th day of September, 2009.

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LEWIS AND ROCA LLP

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Sean Garrison, Admitted Pro Hac Vice

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Attorneys for Plaintiff RSC Equipment Rental, Inc.
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-- and --

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 9-4-09
Paul Connes

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Defendant
365 Chateau La Salle Drive
San Jose, CA 95111

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EXHIBIT A

EXHIBIT A

EXHIBIT A

STIPULATED PRELIMINARY INJUNCTION AS TO DEFENDANT PAUL CONNES
EXHIBIT TO PROPOSED ORDER GRANTING PLAINTIFF'S MOTION FOR TRO
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LecG

Evidence Custody Log (Client Systems) v.1.1

Case Name, Case Number	Evidence Released by (Entity)	Date/Time	Handling Lab		
RSCEQ - 28468	Paul Connes	9/3/2009 12PM	SF		
A0001	HP Desktop (silver)	365 Chateau LaSalle Dr, San Jose, CA	HP Media Center M0008	MXK4031QJ3	
A0002	HP Desktop (black)	365 Chateau LaSalle Dr, San Jose, CA	HP	CN754828QL	
A0003	Silver Microcenter USB Drive	↓	MicroCenter	—	—
A0004	Teal Microcenter USB Drive	↓	Microcenter	—	—
A0005	Sandisk Cruzer mini 2GBmb	↓	SanDisk	SDCZ2-256	MR#510 UGB
A0006	Imation USB Drive	↓	Imation	HMD5-032C E-D900-03-3213	
A0007	Imation USB Drive	↓	"	HMD5-032C E-D900-03-3213	

Case Number	Officer Testifying (Initials)	Date/Time of Release	Received by (Initials)	Date/Time Received
A0001	Paul Conner	9/3/2009 12 PM	Robert Johnson	7/3/2009 12 PM
A0002				
A0003				
A0004				
A0005				
A0006				
A0007				

LECG

Evidence Custody Log (Client Systems) v.1.1

Case Name, Case Number	Evidence Released by (Entity)	Date/Time	Handling Lab
RSCEQ - 28468	Paul Conner	9/3/2009 12PM	SF
A0008	Box of CD-R disks (HP m480n Recovery) 9disks	365 Chateau LaSalle Dr., San Jose, CA	Generic
A0009	Labeled "Data Backup"	↓	"GQ" Great Quality CDR 700 MB
A0010	No Label	↓	" " CDR 700 MB
A0011	"Recover CD"		Maxell CD-R 700 MB
A0012	No Label		Memorex " "
A0013	No Label		GQ "Great Quality" "
A0014	" "		i-mation CDRW 650MB
A0015	Floppy Disk S. Ponz (408) 469 2559 Guidance 96	↓	Sony

Accession Number	Item Description (if applicable)	Date of Receipt	Date of Installation	Date of Removal
A0008	Paul Connex	9/3/2009 12PM	Robert Johnson	9/3/2009 12PM
A0009				
A0010				
A0011				
A0012				
A0013				
A0014				
A0015				

LECG

Evidence Custody Log (Client Systems) v.1.1

Case Name, Case Number	Evidence Released by (Entity)		Date/Time	Handling Lab	
RSCEQ-28468	Paul Conner		9/3/2009 12 PM	SF	
A0016	"Garmin"	365 Chateau La Salle Dr, San Jose, CA	GQ "Great Quality"	CDR 700 MB	—
A0017	No Label DVD+R		Verbatim	DVD+R	—
A0018	TBS Box	↓	Sony CDR	CDR 700 MB	GB1015B31B111A80
A0019	Motorola Nextel	↓	Motorola	H29UAH6 RR5AN	IMEI: 000103136666120
A0020	Blue Motorola + charger Flip phone (nextel)	↓	u	H65XAN 6RR4AN	IMEI: 001700036430590
A0021	Yellow Motorola Nextel + charger	↓	ll	H58XAH 6RR7AN	IMEI: 000100297740330

EXHIBIT B

EXHIBIT B

EXHIBIT B

STIPULATED PRELIMINARY INJUNCTION AS TO DEFENDANT PAUL CONNES
EXHIBIT TO PROPOSED ORDER GRANTING PLAINTIFF'S EX PARTE APPLICATION FOR TRO
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Protocol for the Acquisition and Review of Electronically Stored Information

The following describes the procedures or protocol to be followed in connection with the forensics review of electronic storage devices in this case:

- Once computer(s) and other data storage devices are provided to the computer forensics consultant, a chain of custody document will be made available and executed evidencing the possession of the subject electronic data or equipment as it is transferred from one party to another. The document will list all hardware and related serial numbers.
- The computer forensics consultant will use appropriate forensic tools commonly used in the industry to create a full mirror image, or bit-stream copy of all electronic storage devices. Prior to doing so, the computer forensics consultant will attach a write-blocking device to prevent any changes from being made to any of the data on the subject devices.
- Once an image is obtained, the information will be searched, viewed and sorted by a qualified examiner. The examiner will recover deleted files, search for designated keywords, and analyze metadata and system artifacts in connection with its forensic analysis.
- The examiner will create and provide a report of its analysis to counsel for the parties along with a list of all files containing the designated keywords. The examiner will follow any restrictions or directions provided by the Court in connection with the production of actual copies of the files. The examiner will also acknowledge and follow the restrictions of any confidentiality or protective order that is entered in the case.
- If keywords appear in unallocated space on a storage device, the examiner will provide such data in the most technically practical format possible at the request of counsel.